


CHAPTER 9

Representative Payees



This chapter explores several important provisions regarding representative payees, including when a representative payee is needed, how a payee is selected, the responsibilities of a payee, and how payees can be changed. It also provides information about when and how a person can begin to receive his or her own benefits. Much of this chapter was abstracted from the SSA Handbook, which provides guidance about these and many other issues related to representative payees.¹ 

What is a representative payee?

A representative payee is an individual, agency, organization, or institution that SSA selects to receive and manage benefits on behalf of an incapable or legally incompetent beneficiary. When evidence suggests a beneficiary is unable to manage or direct management of benefit payments in his or her own best interests, representative payment may be made. SSA assumes that all adult beneficiaries have the right to manage their own benefit payments. However, if it is determined that a person is in need of a representative payee, the person or organization best suited to serve as the payee is selected.

When does SSA appoint a representative payee?

SSA appoints a representative payee when the Agency determines that a beneficiary is unable to manage or direct someone else in the management of his or her benefit payments. SSA regulations state that a representative payee is required when a beneficiary is: (1) a minor child under age 15; (2) a legally incompetent adult; or (3) mentally or physically incapable of managing benefit payments or directing the management of his or her benefits.

Legal incompetence

Legal incompetence can be determined only by a court after a judicial proceeding; it cannot be determined by SSA. The

¹ The Handbook can be found at: www.socialsecurity.gov/OP_Home/handbook/handbook.16/handbook-toc16.html.

determination that a person is legally incompetent results in the court's appointment of a guardian. SSA relies on the decision of the court and appoints a representative payee for any beneficiary who has been declared legally incompetent—even if the beneficiary was managing his or her benefits successfully. Of course, circumstances may change and the court subsequently may re-assess competence and find the beneficiary competent. In that case, as explained later in this chapter, SSA may resume direct payment.

Mental and physical incapability

Unless a court has determined a recipient is incompetent to manage SSI payments, mental and physical incapability is determined by SSA based on medical evidence, SSA's own observations of the beneficiary's behavior, and statements from relatives, friends, and others who have known and observed the beneficiary. If a case manager believes that a client is mentally or physically not capable of managing or directing the management of his or her own benefit, he or she should notify SSA, so that SSA can determine incapability and consider appointing a representative payee.

Not every applicant who is found disabled due to a mental impairment requires a representative payee. A payee is necessary only if a beneficiary is found unable to use money in his or her own best interest. Typically, this is limited to people unable to manage or direct someone else to manage their money due to delusions, impulse control problems, or recent histories of drug or alcohol abuse. However, if the beneficiary continually has been managing benefits successfully, SSA has the option to allow the

beneficiary to continue to receive the benefit check directly.

What are the responsibilities of representative payees?

The responsibilities of a representative payee are to:

- Determine the beneficiary's current financial needs and save the remainder for the beneficiary's future use;
- Apply the benefit payments only for the beneficiary's use and welfare;
- Maintain a continuing awareness of the beneficiary's needs and condition;
- Notify SSA of any change in the payee's circumstances that would affect performance of the payee responsibilities;
- Report any event that would affect the amount of benefits the beneficiary receives or the right of the beneficiary to receive benefits from SSA; and
- Report on the use of the benefits, when requested to do so, and make all supporting records available for review, if requested by SSA.

Funds received on behalf of the beneficiary should be maintained separately from all other funds in the possession of the payee, including his or her own money. Any money deposited in a bank should be kept in a separate account and titled to show the beneficiary's ownership of the account.

Responsibilities of representative payees are limited to managing the Social Security benefits received by the beneficiary.

Designation as a representative payee does not confer any other legal rights or responsibilities.

If a payee fails to carry out his or her duties, or if there is an abuse of the authority vested in him or her, SSA may reach a decision that the payee no longer is entitled to serve in that role.

What expenditures does SSA deem appropriate?

A representative payee must apply the payments for the use and benefit of the entitled individual. Social Security and/or SSI benefits are properly disbursed if they are:

- Spent for the beneficiary's current and reasonably foreseeable needs; or
- Saved or invested for the beneficiary, after current needs have been met.

Current needs are defined as shelter, food, clothing, utilities, medical care and insurance, dental care, personal hygiene, education, and the rehabilitation expenses of disabled beneficiaries. Representative payees also may use funds to pay the beneficiary's pre-existing debts, but only after all current needs have been met. Any additional funds should be invested or saved. Preferred investments are U.S. Savings bonds, or interest bearing bank accounts. Investments such as stocks and other types of bonds are discouraged.

All invested funds must be monitored to ensure that the beneficiary's income or assets

do not exceed the SSI income or resource guidelines. If it becomes necessary to take action to reduce the assets of an SSI recipient, case managers should refer to Chapter 4 for guidelines regarding asset expenditure.

How does a payee account for benefit payments?

SSA sends a Representative Payee Report form to each payee once a year asking:

- The amount of benefit payments on hand at the beginning of the accounting period plus that received during the period;
- How the benefit payments were used;
- How much of the benefit payments were saved and how the savings were invested;
- Where the beneficiary lived during the accounting period; and
- The amount of the beneficiary's income from other sources during the accounting period.²

A payee must submit this information in a timely manner or provide a good reason for not doing so.

If a case manager believes a representative payee is not acting in the best interests of a beneficiary, he or she should report it to SSA. This information can provide the basis for SSA to ask for such an accounting or to decide whether to change payees.

² 20 C.F.R. 416.665.

Who can be a representative payee?

In selecting a representative payee, SSA looks for the “person, agency, organization, or institution that will best serve the interest of the beneficiary.” When choosing a payee, SSA considers the:

- Prospective payee’s relationship with the beneficiary;
- Amount of interest the payee has shown in the beneficiary;
- Any legal authority that the payee may have over the beneficiary;
- Whether the payee has custody of the beneficiary; and
- Whether the payee is in a position to understand and look after the beneficiary’s needs.

In most cases, the order of preference in selecting a payee for a beneficiary, age 18 or over, is—

- A spouse, parent, other relative, or legal guardian who has custody of the beneficiary, or who shows a strong concern for the personal welfare of the beneficiary;
- A friend who has custody of the beneficiary;
- A public or nonprofit agency or institution, Federal institution, or a statutory guardian or voluntary conservator that has custody;
- A private institution operated for profit and licensed under State law that has custody of the beneficiary;
- People other than the above who can carry out the responsibilities of a payee and who are able and willing to serve as

a payee for a beneficiary (e.g., members of community groups or organizations who volunteer to serve as a payee for a beneficiary);

- A friend without custody, but who demonstrates a strong concern for the personal welfare of the beneficiary; or
- An organization that charges a fee for its service.

SSA uses the preference list as a guide and is not required to follow this order of preference, if doing so would not serve the beneficiary’s best interest.

In some cases, a beneficiary may ask that SSA appoint as representative payee, a friend, family member, or guardian who is not necessarily the best choice. A case manager is in a unique position to identify this potential misstep since he or she often knows the client best. The case manager should suggest to both the applicant and SSA alternative people or agencies to serve as the representative payee. If the case manager has completed a SSA-1696 Appointment of Representative form, this recommendation can be made to SSA (if absolutely necessary) without the client’s permission. This should occur only in situations when the case manager feels the client’s funds will be misused by the representative he or she has named.

In light of SSA’s stated preferences, case managers and the organizations they represent effectively are the payees of last resort. If a beneficiary does not have a family member or friend to serve as a payee, and the beneficiary is not in the custody of an institution that can be his or her payee, then a case manager or other homeless program staff person may apply to serve in that role.

What rights does a beneficiary have?

Beneficiaries have formal appeal rights in a number of areas related to representative payees, including the right to appeal the decision to appoint a payee; the right to appeal the payee selection; and the right to appeal with respect to a misuse of benefits determination.

Challenging the decision to require a representative payee

It is not unusual for a beneficiary determined to be in need of a representative payee to object to that requirement. Several approaches can be taken to challenge a decision:

- Challenges at the time the decision is made. When SSA determines a representative payee is necessary, they are required to notify the beneficiary before effectuating the decision. In the notice, SSA will state the intention to appoint a representative payee.

A beneficiary may object to this proposed decision by contacting SSA. SSA must provide access to the evidence used to determine that a payee is necessary. SSA must allow the beneficiary to submit additional evidence to refute the evidence and/or affect the decision.

- Challenges after the decision is made. A beneficiary receiving benefits through a representative payee may challenge that decision at any time by submitting to SSA information that shows he or she is able to manage benefits alone. The most

useful evidence is a treating physician's statement or completion of the SSA-787 form by the treating physician. SSA considers the medical evidence and makes a decision based on that evidence, along with any evidence it develops from non-medical services.

If a person previously has been judged legally incompetent by the court, he or she must submit a certified copy of the court order restoring his or her rights. Once that documentation is received, SSA may resume direct payment to the beneficiary, unless evidence suggests that the beneficiary remains mentally or physically incapable of managing his or her own benefits. If SSA denies the beneficiary's request to resume direct payments, the beneficiary may file a Request for Reconsideration and proceed through the SSA appeals process.

Changing representative payees

If a beneficiary believes a payee is not complying with legal obligations, SSA should be notified and will investigate the allegations. If necessary, SSA will process a payee application from another person, as long as the new applicant being suggested is suitable to serve as payee. In addition, the beneficiary, or a case manager working with a beneficiary, should provide SSA with any evidence they have uncovered that the payee has not complied with the rules. If SSA finds the evidence credible, in addition to selecting a new payee, SSA will note the information on the original payee's record so he or she cannot become a representative for other beneficiaries.

Misuse of benefits

SSA is required to reissue benefits to beneficiaries whose funds have been misused by organizational representative payees or by an individual serving 15 or more beneficiaries. SSA then seeks to recover the misused funds from the payee. Reissued benefits are excluded from SSI resource determinations. This is effective for misuse determinations made by SSA on or after January 1, 1995.

Requests for Reconsideration

If SSA assigns a representative payee or does not agree to change a representative payee, the beneficiary may file a Request for Reconsideration. If the beneficiary continues to be dissatisfied, he or she may follow the regular SSA appeals process described in Chapter 7. Case managers can assist beneficiaries by serving as a representative and helping to appeal a decision.

While a representative payee is in charge of managing a beneficiary's funds, he or she has no jurisdiction over when or if a beneficiary can file an appeal unless the individual is also a court-appointed legal guardian. This ensures that representative payees cannot prevent beneficiaries from enforcing their rights under SSA regulations.

What do case managers need to consider before becoming representative payees?

A case manager can take a number of different roles with respect to representative payees. The most obvious is to be the representative payee. It is important to note

that it is not the individual case manager, but the case manager's organization, that becomes the representative payee. Besides taking on this role, case managers also can be active in educating family members or friends who are representative payees, monitoring payees to ensure that they are acting on the beneficiaries' best interest, and helping beneficiaries meet the requirements necessary to regain responsibility for managing their own benefits.

Becoming a representative payee

While a case manager may not be SSA's first choice for a representative payee, case managers are often asked by SSA, by the recipient, or by friends or family to take on this role. No matter how the issue comes up, case managers should be aware of what may be involved.

- *Being a representative payee can be challenging.* It usually is time-consuming, and it can be difficult to assist a beneficiary when he or she does not believe that the funds are being used according to his or her preferences.
- *Being a representative payee changes the relationship with a client.* Being in a position of managing someone's money requires skill, sensitivity, respect, and empathy. It also infuses the case manager/client relationship with a level of power and control beyond what commonly may exist. Case managers must be respectful of that change, and clients must be very trusting to initiate it without resentment.
- *Case managers can provide critical assistance.* Case managers willing to serve as a representative payee can ensure that their clients receive the

proper benefit amount, and that those benefits are managed appropriately.

- *Nonprofit representative payees can be compensated.* If an organization is community-based, a tax exempt 501(c)(3) agency, bonded and licensed in the State, and regularly provides representative payee services to at least five beneficiaries, SSA may authorize to charge a monthly fee of up to \$32 (\$61 for a beneficiary with a substance use disorder), or up to 10 percent of the beneficiary's benefits, whichever is less.³ However, the organization must not be a creditor of the beneficiary. Procedurally, organizations seeking to collect fees for serving as a representative payee must provide SSA with a written request. Along with the request, the organization must provide evidence to show that it meets the above criteria. Fees cannot be collected until SSA approves the request in writing.

In light of the pros and cons presented by the situation, case managers must make informed decisions every time the possibility of becoming a representative payee arises.

Educating others to be representative payees

Frequently, case managers work with family members and friends of the people they are helping. When someone else is serving as a representative payee, the case manager should help ensure that the person is aware of how to act effectively as a payee. In particular, the person should know the duties of a payee. Case managers always can direct others to the SSA Web site or can give them sections of this manual.

Monitoring payees

Occasionally, case managers may suspect an existing payee is not acting in a beneficiary's best interest. If this situation arises, case managers should contact SSA and explain their concerns. To the extent possible, if there is evidence of mismanagement, the case manager should forward that evidence to SSA.

Educating beneficiaries

Case managers can help clients by teaching them money management skills. In this way, clients who previously have been poor money managers ultimately may be able to receive their benefit directly. Periodically, case managers may assess a beneficiary's money management skills and provide evidence to SSA of the beneficiary's capacity to receive and manage checks when, and if, those skills are mastered.

Summary

Sometimes beneficiaries are unable to manage the funds that are received from Social Security because of mental or physical limitations. When that situation occurs, SSA appoints a representative payee. Case managers can be helpful in many ways, including providing evidence to SSA that either confirms or refutes the need for a representative payee, serving as a representative payee when no other person or organization is available, monitoring or assisting representative payees to ensure that they meet the rules and requirements of the position, and helping beneficiaries learn the money management skills necessary to eliminate the need for a representative payee.

³ The fees are re-determined each December based on the annual Cost of Living Adjustment.

